



fact sheet

November 2015

NUMBER 8

Commonwealth legislation that may apply to Australian Government funding recipients

Commonwealth legislation that may apply to Australian Government grant recipients

This fact sheet provides grant recipients who enter into a grant agreement with Australian Government agencies with information about some Commonwealth laws that may be relevant to their grant arrangements.

The legislation referred to in this fact sheet can be accessed at <http://www.comlaw.gov.au>

Crimes Act 1914

The *Crimes Act 1914* sets out various offences, including:

- offences against the Government (such as destroying or damaging Commonwealth property)
- offences covering disclosure of information by Commonwealth officers (including persons performing services for the Commonwealth) – see in particular ss 70 and 79 — miscellaneous offences including trespassing on Commonwealth land.

The Act also contains provisions relating to the investigation and prosecution of Commonwealth offences, and the sentencing, administration and release of federal offenders. Where the Act applies, it excludes State and Territory law.

Commonwealth Criminal Code

The Commonwealth Criminal Code, established by the *Criminal Code Act 1995*, provides the general principles of criminal responsibility that apply in the prosecution of all offences against laws of the Commonwealth. In addition, the Code establishes the parameters of corporate criminal responsibility and makes it an offence to commit various acts against the Commonwealth, including:

- terrorist acts, and conduct associated with a terrorist act (such as providing or collecting funds)
- theft and property offences (where the property belongs to the Commonwealth or a Commonwealth entity)
- fraud and forgery against the Commonwealth
- bribery of a Commonwealth public official
- causing harm to, impersonating and obstructing Commonwealth public officials
- communication of information concerning the Commonwealth's security or defence (s 91.1).

Competition and Consumer Act 2010

The purpose of the *Competition and Consumer Act 2010* is to enhance the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection. The Act

deals with almost all aspects of the marketplace: the relationships between suppliers, wholesalers, retailers, competitors and customers.

In broad terms, the Act covers unfair market practices (including misleading and deceptive conduct), restrictive trade practices (for example, price-fixing), industry codes, mergers and acquisitions, product safety, product labelling, price monitoring, and the regulation of aspects of certain industries.

For further information see: <http://www.accc.gov.au>

Privacy Act 1988

The *Privacy Act 1988* contains 13 Australian Privacy Principles (APPs) which apply to Australian Government agencies and to a range of organisations.

Where a grant recipient is a 'contracted service provider', under s 95B of the Privacy Act, Australian Government agencies are required to take contractual measures to ensure that the grant recipient does not breach the APPs. A grant recipient is a 'contracted service provider' if they provide services to persons other than the agency in connection with the performance of the functions of an agency (for example, providing services to visa applicants under a grant arrangement with the Immigration Department). This may mean that an organisation who is not ordinarily otherwise required to comply with the APPs will be contractually required to comply in accordance with the relevant grant agreement.

For further information see: <http://www.privacy.gov.au>

Archives Act 1983

The purpose of the *Archives Act 1983* is to govern the preservation and use of archival resources of the Australian Government. Under the Act it is an offence to engage in conduct that results in the destruction or other disposal, the transfer of custody or ownership, or the damage or alteration, of a Commonwealth record unless an exception applies. Exceptions include where:

- the conduct was required by law
- the conduct was carried out with the permission of the National Archives of Australia (NAA) or in accordance with a practice or procedure approved by NAA
- the disposal is a normal administrative practice of the Commonwealth or Commonwealth authority, other than one of which NAA has notified that it disapproves
- the conduct was carried out to place Commonwealth records in the custody of the Commonwealth or a Commonwealth institution.

For further information see: <http://www.naa.gov.au>

Auditor-General Act 1997

The *Auditor-General Act 1997* allows the Auditor-General to conduct a review or examination, at any time, of any aspect of the operations of Australian Government agencies. The Auditor-General has extensive information-gathering powers, including in relation to commercial-in-confidence material, and also has a contractual right under many Australian Government contracts to exercise these powers in relation to contractors to Australian Government agencies.

For further information see: <http://www.anao.gov.au>

Ombudsman Act 1976

The *Ombudsman Act 1976* authorises the Ombudsman to investigate the administrative actions of Australian Government departments and agencies and sets out the limits on his or her jurisdiction.

The Ombudsman may conduct investigations following complaints or at his or her own instigation and may make reports with recommendations. The Ombudsman has extensive information-gathering powers.

The Ombudsman also has jurisdiction to investigate the actions of certain Australian Government contractors that provide goods and services for or on behalf of the Australian Government to another person who is not the Australian Government. Actions of those contractors are deemed to have been taken by the contracting Commonwealth agency.

For further information see: <http://www.ombudsman.gov.au>

Public Governance, Performance and Accountability Act 2013

The *Public Governance, Performance and Accountability Act 2013* (PGPA Act) provides the framework for the proper management of relevant money and relevant property (public resources), **and** regulates certain aspects of corporate governance and reporting of Commonwealth authorities and companies.

The Minister for Finance has issued the Commonwealth Grant Rules and Guidelines (CGRGs) under the PGPA Act. The CGRGs are a key mechanism to enable Australian Government agencies to manage public resources efficiently, effectively, economically and ethically when administering grants

For further information on the PGPA Act and the CGRGs see: <http://www.comlaw.gov.au>

Racial Discrimination Act 1975

The *Racial Discrimination Act 1975* makes racial discrimination unlawful in Australia and covers discrimination in areas such as employment, renting or buying property, the provision of goods and services, access to public premises and advertising.

For further information see: <http://www.humanrights.gov.au>

Sex Discrimination Act 1984

The *Sex Discrimination Act 1984* makes it unlawful to discriminate on the basis of sex, marital status, pregnancy or potential pregnancy in a number of areas of public life. These areas include employment, education, accommodation, the provision of goods, facilities and services, the activities of clubs and the administration of Australian Government laws and programs.

The Act also seeks to eliminate dismissal of employees on the basis of family responsibilities and to eliminate sexual harassment in areas of public activity.

For further information see: <http://www.humanrights.gov.au>

Disability Discrimination Act 1992

The *Disability Discrimination Act 1992* makes it unlawful to discriminate against someone, in areas of life including employment, access to public premises, the provision of goods and services and facilities and the administration of Commonwealth Government law and programs, if they have a disability. Disability discrimination happens when people with a disability are treated less fairly than people without a disability or when people are treated less fairly because they are relatives, friends, carers, co-workers or associates of a person with a disability.

For further information see: <http://www.humanrights.gov.au>

Age Discrimination Act 2004

The *Age Discrimination Act 2004* makes it unlawful to discriminate on the basis of age in a number of areas of public life. These areas include employment, education, accommodation, the provision

of goods, services and facilities, access to public premises and the administration of Australian Government laws and programs.

For further information see: <http://www.humanrights.gov.au>

Australian Human Rights Commission Act 1986

The *Australian Human Rights Commission Act 1986* (formerly the *Human Rights and Equal Opportunity Commission Act 1986*) empowers the Australian Human Rights Commission to inquire into complaints of discrimination in employment and alleged breaches of human rights through acts or practices done by or on behalf of an individual, organisation or the Australian Government.

For further information see: <http://www.humanrights.gov.au>

Workplace Gender Equality Act 2012

To be compliant with the *Workplace Gender Equality Act 2012*, relevant employers (being registered higher education providers and organisations that employ 100 or more staff) must lodge reports each year to the Workplace Gender Equality Agency containing information relating to various gender equality indicators.

For further information see: <http://www.wgea.gov.au>

Work Health and Safety Act 2011

The *Work and Health Safety Act 2011* (Cth) requires a 'person conducting a business or undertaking' (PCBU) to ensure, so far as is reasonably practicable:

- the health or safety of their workers while they are at work in the business or undertaking
- that the health and safety of others is not put at risk from work carried out as part of the business or undertaking.

The term 'PCBU' includes companies, not-for-profit enterprises, partnerships and natural persons but not volunteer associations. The term 'worker' includes employees, contractors, volunteers and anyone undertaking 'work'.

For more information on the Act and other relevant regulations and codes of practice see:

<http://comcare.gov.au/WHS>

Australian Government Building and Construction WHS Accreditation Scheme

The Australian Government Building and Construction WHS Accreditation Scheme is established under the *Fair Work (Building Industry) Act 2012*. The Accreditation Scheme applies where a funding recipient will undertake or manage building work where **either**:

- the value of the Australian Government contribution to the project is at least \$6 million and represents at least 50% of the total project value
- the Australian Government contribution to the project is \$10 million or more, irrespective of the proportion of Australian Government funding.

Where either of these thresholds are met, each head contractor (builder) undertaking building work with a contract valued at \$4 million or more must be an accredited builder.

For further information see: <http://www.fsc.gov.au>

Fair Work Act 2009

The *Fair Work Act 2009* has put in place a new workplace relations system.

For further information see: <http://www.employment.gov.au> or <http://www.fairwork.gov.au>

Environment Protection and Biodiversity Conservation Act 1999

The *Environment Protection and Biodiversity Conservation Act 1999* protects the environment, particularly matters of national environmental significance. The Act establishes a national environmental assessment and approvals process, protects Australian biodiversity and regulates the management of important natural and cultural places.

The Act requires that prior approval be obtained for actions that are likely to have a significant impact on:

- a matter of national environmental significance
- the environment of Commonwealth land (even if taken outside Commonwealth land) – the environment anywhere in the world (if the action is undertaken by the Commonwealth). An action includes a project, development, undertaking, activity or series of activities.

For further information see: <http://www.environment.gov.au>

Copyright Act 1968

The *Copyright Act 1968* provides for the protection of an author's copyright and moral rights and allows a copyright owner to grant others rights in their copyrighted work.

For further information see: <http://www.ag.gov.au> and <http://www.ipaustralia.gov.au>

Readers should also be aware of other legislation that applies to other intellectual property rights, including the *Trade Marks Act 1995*, *Patents Act 1990*, *Plant Breeder's Rights Act 1994*, *Designs Act 2003* and *Circuit Layouts Act 1989*.

Additional information

Readers should also be aware that the Australian Government has a number of policies that impact on the way that the Australian Government provides funding to funding recipients.

Two such policies are:

- ***Building Code 2013.***
For information see: <http://www.employment.gov.au> or <http://www.fwbc.gov.au>
- ***Protective Security Policy Framework.***
For more information see: <http://www.ag.gov.au>

This material was updated in October 2015. The legislation referred to may have changed since that date. The material is provided for general information only and should not be relied upon. It does not purport to identify all of the obligations that a contractor may have under any of the legislation mentioned or indeed any other legislation. Some of the legislation mentioned may not be applicable to a particular Australian Government agency, contractor or contract. It is also likely that there will be other legislation that applies to the contract. Contractors should take their own legal advice about what laws apply to them and what steps are required to comply with those laws.

© Commonwealth of Australia, represented by AGS 2015. Apart from any use permitted under the *Copyright Act 1968* or unless otherwise expressly indicated all other rights are reserved. Requests for further authorisation should be sent to webhelp@ags.gov.au